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REQUEST FOR THE INCLUSION OF AN ITEM IN THE PROVISIONAL AGENDA OF THE FORTY-EIGHTH SESSION

QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE

Letter dated 24 June 1993 from the Chargé d'affaires a.i. of the Permanent Mission of New Zealand to the United Nations addressed to the Secretary-General

I have the honour to request, in accordance with rule 13 of the rules of procedure of the General Assembly, the inclusion in the provisional agenda of the forty-eighth session of the General Assembly of an item entitled "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice".

In accordance with rule 20 of the rules of procedure, an explanatory memorandum concerning the request is annexed to the present letter.

(Signed) John McKINNON
Chargé d'affaires a.i.

ANNEX

Explanatory Memorandum

RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE

United Nations operations around the world are expanding and intensifying. As a consequence, personnel involved in and associated with UN operations are increasingly deployed in situations where they are subject to physical attack. In his "Agenda for Peace" the Secretary-General drew attention to the "unconscionable increase in the number of fatalities" amongst UN personnel and observed in this regard that "As the variety and scale of the threat widens, innovative measures will be required to deal with the dangers facing United Nations personnel".

Recent tragic events in Somalia and Cambodia, among others, have underlined the urgent need to develop such measures.

The related issues of the safety and status of UN personnel and the responsibility of States to ensure their protection have been discussed in a number of United nations forums:

- On 31 March the Security Council issued a Presidential Statement (S/25493) calling, inter alia, for States and the parties to various conflicts around the world to take all possible steps to ensure the safety of UN personnel. The Council called for the Secretary-General to report on the adequacy of current arrangements for the safety or UN personnel and to make appropriate recommendations on enhancing the safety and security of UN personnel.

- The Special Committee on Peace-keeping Operations has recently drawn attention to the need for further steps to enhance the status and safety of United Nations personnel involved in peacekeeping operations.

- The need for effective arrangements to ensure the safety and security of UN personnel has also been raised in the context of the Open-ended working group of the General Assembly which is considering "Agenda for Peace".

As is evident from the comments submitted by New Zealand (S/25667) in relation to the report called for by the Security Council on 31 March 1993, we consider that in order to address the problems currently faced in this area a range of measures may need to be elaborated in relevant bodies of the United Nations.

As recent events have demonstrated, there is a particular and urgent need to focus specific attention on the question of responsibility for attacks on UN and associated personnel (whether they are peacekeepers or personnel deployed for peace-making, preventive diplomacy, peace-building or for humanitarian purposes) and the consequential question of measures to ensure that those who carry out such attacks are brought to speedy trial under an appropriate legal regime.

The existing legal instruments and customary international law relevant to this matter give rise to anomalies and inadequacies. As a result there is a serious risk that those who direct violence against such personnel will believe that they can proceed with impunity, especially in situations where the state or states concerned are unable to exercise jurisdiction in order to ensure the safety and security of such personnel, or where a state is unwilling to discharge its responsibilities in this regard.

While the Security Council has responded in various ways to attacks made on UN personnel in certain situations (Resolution 804 on Angola, Resolution 792 on Cambodia and Resolution 837 on Somalia), these responses demonstrate the limited options available in the absence of a more concrete legal framework to effectively deter, prosecute and punish such violence.

New Zealand believes that the United Nations should have the means to hold personally responsible those who attack or commit other acts of violence against UN and associated personnel. In this regard, the protections established in the Geneva Conventions for offences against civilians and military personnel who for various reasons are no longer combatants (such as wounded, prisoners, and medical personnel) should be noted. New Zealand believes that international law relating to United Nations forces and other relevant personnel should be no less effective than the rules of international law protecting soldiers actually engaged in fighting a war.

A further situation which needs to be addressed is where United Nations forces are deployed under mandates which require them to keep the peace in situations of armed conflict between a government and a faction or movement within a state. It is essential that those who carry out attacks against UN and associated personnel in such situations should not be able to escape prosecution and punishment. However, under classical principles of international law, entities which are not states are not subject to international law and are outside its jurisdiction. New Zealand believes that there is a clear need for the innovative development of international law in this area.

New Zealand considers that the issues referred to above are among those that need to be addressed by the General Assembly under the item it proposes for inclusion in the provisional agenda.